



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Eastern States
20 M Street SE, Suite 950
Washington D.C. 20003
<http://www.es.blm.gov>

SEP 20 2017

In Reply Refer To:
3120 (930 JRK)
September 2017 Lease Sale

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Center for Biological Diversity
1212 Broadway #800
Oakland, CA 94612

Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Ohio Environmental Council
1145 Chesapeake, Ave., Suite I
Columbus, OH 43212

Heartwood
PO Box 1926
Bloomington, IN 47402

Athens County Fracking Action
8474 Terrell Rd
Athens, Ohio 45701

Buckeye Environmental Network
P.O. Box 824
Athens, Ohio 45701

DECISION

: September 21, 2017
: Competitive Oil and Gas
: Lease Sale

PROTEST DENIED

On July, 31, 2017, the Bureau of Land Management (BLM) Eastern States Office (ESO) timely received a protest filed on behalf of the above cited parties (Protesters) disputing the inclusion of 3 Ohio¹ parcels (Ohio Parcels) in the BLM Eastern States September 21, 2017 Competitive Oil and Gas Lease Sale (September Lease Sale). For the reasons stated below, the protest is hereby denied.

BACKGROUND

Parcel Review

The Ohio Parcels were nominated for ESO's consideration to lease by interested parties in accordance with 43 CFR §3120.3. Subject Parcels include unleased federal mineral estate administered by BLM, and within the jurisdiction of ESO and the Northeastern States District (NSD). Following ESO's preliminary adjudication of ownership and availability of minerals,

¹OHES 058296, OHES 058298, OHES 058299.

Subject Parcels were forwarded to the NSD for review of environmental concerns, including interdisciplinary analyses and field visits, in compliance with National Environmental Policy Act (NEPA) and BLM's national policy codified in BLM manuals, handbooks, and Instruction Memorandums, as further discussed below.

When BLM seeks to issue oil and gas leases for acquired lands managed by the Forest Service, such as the Subject Parcels, the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) requires consent from the Forest Service prior to leasing, as well as Forest Service input on necessary stipulations (30 U.S.C. § 226(h)). Accordingly, NSD's review included a request for Forest Service inspection of the proposed parcels, consent to ensure leasing of the parcels would be in conformance with the applicable Forest Plan decisions, and the receipt of consent to offer the described parcels, as further discussed below. On June 15, 2016, consent to lease Subject Parcels was provided to ESO by the Forest Service.

National Environmental Policy Act Analysis

In compliance with NEPA, BLM undertook an Environmental Analysis (EA) to determine whether oil and gas leasing within 40,000 acres of the Marietta Unit, Wayne National Forest could occur with no significant environmental impact, or if a more in depth environmental impact statement would be required prior to offering of Subject Parcels. The NSD conducted site visits on October 26 and 27, 2015 within portions of the Marietta Unit. The NSD also evaluated potential effects: Air Resources/Climate Change, Plant and Animal Habitat/Populations; Geology and Mineral Resources; Soils; Water Resources/Water Quality; Wastes (Hazardous or Solids); Public Health and Safety; Transportation; Land Use and Recreation; Noise; Cultural Resources/Paleontology; Native American Religious Concerns; Visual Resources/Scenic Quality; Socioeconomics and Environmental Justice; and Cumulative Impacts. As further discussed below, during the EA process, NSD incorporated the 2005 Biological Opinion (BO) prepared for the 2006 Forest Plan and Final Environmental Impact Statement (2006 FP/FEIS), and finding no potential significant impact to the Wayne National Forest from future and current oil and gas development, as well as a 2016 Biological Opinion (BO) prepared to evaluate potential impacts to specific bat species of activities such as oil and gas development.

In November 2015, the BLM also created a project website for the Marietta EA to provide the public links to documents, additional project information and comment opportunities, including methods for comment submission, maps and EOI information. The website is accessible through the BLM National NEPA Register². On April 28, 2016, the draft Marietta EA was posted on the project website in accordance with applicable BLM Manual and Handbook 3120 Competitive Leasing and Washington Office IM No. 2010-117. As a result of the public review period, the BLM received approximately 13,700 comments by email and 480 comments by U.S. postal service or FedEx. Approximately 300 comments were identified as substantive in accordance with NEPA. Public comments were addressed by either expanding existing sections of the EA, providing clarification, or adding additional information. On October 14, 2016, BLM posted EA DOI-BLM-Eastern States-0030-2016-0002-EA, Oil and Gas Leasing, Wayne National Forest, Marietta Unit of the Athens Ranger District (Marietta EA). The changes made to the draft Marietta EA are summarized in a comment matrix attached as Appendix A in the Marietta EA.

² https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do

In accordance with *BLM National Environmental Policy Act Handbook H-1790-1* (NEPA Handbook), *Section 6.2.1*, NSD developed a purpose and need statement early on in the environmental review, and utilized said statement to dictate the scope of the Marietta EA. The Marietta EA describes its purpose and need as follows (Page 16):

The purpose of the Proposed Action is to support the development of oil and natural gas resources that are essential to meeting the nation's future needs for energy while minimizing adverse effects to natural and cultural resources. The BLM minimizes adverse effects to resources by identifying appropriate lease stipulations and notices, best management practices, and mitigations. It is the policy of the BLM as mandated by various laws, including the Mineral Leasing Act of 1920, as amended (30 United States Code [USC] 181 et seq.), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Energy Policy Act of 2005 to make mineral resources available for development to meet national, regional, and local needs. The oil and gas leasing program managed by the BLM encourages the sustainable development of domestic oil and gas reserves which reduces the dependence of the United States on foreign sources of energy as part of its multiple-use and sustainable yield mandate.

The leasing of federal minerals is vital to the United States as it seeks to maintain adequate domestic production of this strategic resource. Industry uses the BLM EOI process to nominate federal minerals for leasing. The Proposed Action is consistent with the BLM's mission and requirement to evaluate nominated parcels and hold quarterly competitive lease sales for available oil and gas lease parcels.

Under Section 102(2)(E) of the Federal Land Management Act (FLPMA), and 40 CFR 1508.9(b), BLM is required to "include brief discussions...of alternatives" used in the environmental analysis to determine the best means of mitigating environmental impacts while satisfying the purpose and need of the proposed action. The Marietta EA considered two alternatives in detail (Pages 21-29):

Alternative 1- No Action Alternative

Under the No Action Alternative, the BLM would not offer federal minerals in the Marietta Unit for oil and gas leasing, including both the parcels requested in currently pending EOIs and all other federal minerals in the Marietta Unit. Without a lease (No Action Alternative), operators would not be authorized to access federal minerals at the time of development but could develop adjacent privately owned minerals, potentially resulting in drainage of federal minerals without benefit to the government.

Alternative 2- Lands Available for Leasing Alternative

Under this alternative, the Bureau of Land Management (BLM) proposes to make available for lease up to approximately 40,000 acres of federally-owned mineral estate located in the Marietta Unit of the Athens Ranger District, Wayne National Forest, in Monroe, Noble, and Washington Counties in Ohio. This approximate acreage represents the total amount of federally-owned minerals that could be nominated and potentially be made available for leasing on the Marietta Unit. Although this EA analysis assumes that both oil and gas may be produced in the future within the Marietta Unit, natural gas is more likely to be produced.

Furthermore, the Marietta EA considered, but eliminated from detailed analysis, additional alternatives (Page 29):

Offer all leases with a no-surface-occupancy stipulation

Offering all leases with a no-surface-occupancy (NSO) stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. This alternative would unnecessarily constrain oil and gas occupancy, especially in this highly fragmented landscape, where the ability to cross federal land may be critical to enabling an operator to develop. A No Surface occupancy stipulation has been incorporated for all slopes in excess of 55 percent and a Controlled Surface Use stipulation applies to slopes between 35 and 55 percent.

Lease minerals for vertical drilling only

Offering all leases with a vertical drilling only stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. A vertical drilling only stipulation would likely result in far greater surface disturbance as more wells would likely be drilled, and result in the least efficient extraction of Federal minerals. The rule of capture is an oil and gas doctrine that allows one to produce oil and gas from their lands even though said oil and gas flows from the lands of their neighbors. In Ohio, the rule of capture entitles landowners to "offset" wells, or wells that do not need to conform with state conservation standards, when one's neighbor is draining their mineral interest. Second, a vertical drilling only alternative is equivalent to a ban on directional drilling, which in turn would be tantamount to a ban on development of the Utica, Marcellus, and other tight formations underlying the forest. Such tight formations require horizontal drilling to extract trapped oil and gas.

Through the analysis in the 2006 Forest Plan/Final Environmental Impact Statement (2006 FP/EIS), as reaffirmed in light of the 2012 Supplemental Information Report (2012 SIR), Marietta EA, the NSD determined the Subject Parcels were appropriate for leasing and what mitigation measures (stipulations) should be applied to the leases for the protection of natural and cultural resources. On October 14, 2016, a FONSI was signed by the NSD District Manager documenting BLM's determination that oil and gas development may occur without significant impact, and thus, no EIS is not required to offer Subject Parcels for lease.

Protesters' Standing

The BLM received a protest letter from the groups listed above, on July 31st, 2017. In the Protest Letter (Pages 2-4), the groups provided a summary of their organizations' general objectives and list of affiliates from Heartwood, Sierra Club, Athens County Fracking Action Network, and Buckeye Environmental Network were provided without signatures.

None of the parties have provided to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107). These groups come to establishing allegations of all adverse effects are general claims of use of the Wayne National Forest from some members. However, it is not clear whether this statement establishes Protesters as a party to the case and as having a legally

cognizable interest that would be adversely affected by the BLM's decision to issue any of the protested leases.

Nonetheless, given the BLM's directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by the Protesters. However, the BLM does so with the reservation that the Protesters may not have standing to bring an appeal of this protest decision to the IBLA.

DISCUSSION

BLM has identified the substantive arguments from the Protest Letter as to why the Subject Parcels should not be offered at the March Lease Sale. The following is a discussion of the specifics as to the Protesters' arguments, as well as BLM Eastern States' responses.

A. Further NEPA analysis on spills from pipelines and other infrastructure associated with fracking in the Wayne is required.

The Protesters argue that the EA fails to address forest-wide, site specific, and cumulative effects of spills and infrastructure within and near the nominated WNF parcels. In connection to spills the Protesters mention the Rover Pipeline, which, according to the parties, will run directly adjacent to segments of the WNF with "new leasing".

However, the Marietta EA adequately included all known projects into its cumulative analysis. For this the Marietta EA used all available knowledge of projects disclosing them as follows (Page 121):

- Approval of an electric line that crosses 600 feet of NFS lands, 2009;
- Habitat improvement for yellow-fringed orchid on 38.5 acres using a variety of mechanical and chemical treatments and minor construction activities, 2010;
- Approval of three oil and gas wells, 2010;
- Renewal of two miles of electric pipeline permits, ranging in width from 15 to 80 feet, 2010
- Renewal of 61 acres of hay and row-crop cultivation and 114 acres of grazing, most of which is in river corridor management area, 2010;
- Renewal of permits for 3,300 feet of road access, 2010;
- Mechanical treatments on managed openings, 2011;
- Habitat management, including 564 acres of early successional habitat creation, 432 acres of alleged stands using single-tree and group selection, and 870 acres of prescribed burning, 2011;
- Approval of an Application for Permit to drill a vertical oil and gas well on a 0.74-acre pad with a 250-foot access road, 2013;
- Plugging and abandonment of six orphaned wells, 2014;
- 4.4-mile expansion of Kinderhook equestrian trail, 2015; and
- Approval of a 150-foot-by-10-foot ATV trail to service an oil and gas well, 2015.

In addition to the projects listed above, the cumulative effects analysis also considers recent past, ongoing, and reasonably foreseeable mineral development (private and federal) within the Marietta Unit. As of 2015, there were 285 federal wells in Washington County, 117 federal wells in Monroe

County, and none in Noble County. There were a total of 790 active wells on private lands in the Wayne National Forest.

Also, pipelines and other infrastructure on the parcels would require surface development, which would not occur until the Application for Permit to Drill has been submitted. Any additional Conditions of Approval (COAs) can be added at this time as the Marietta EA states on Page 125:

Despite the potential for cumulative effects...reclamation and other stipulations and best management practices, as described earlier in this EA, would help to minimize the potential for significant adverse cumulative effects...Additional protections may be applied at the APD stage.

Therefore, the Protesters' argument that BLM failed to account for spill risks is denied, since any new project, including the, still under construction, Rover Pipeline, is not expected to have a significant impact that may shift the Finding of No Significant Impact because of the establishment of future COA's on top of the mitigation measures and Best Management Practices for the proposed action as described on Pages 94-96:

The BLM encourages industry to incorporate and implement BMPs to reduce impacts to air quality through reduction of emissions, surface disturbances, and dust from field production and operations... Additionally, the BLM encourages oil and natural gas companies to adopt proven, cost-effective technologies and practices that improve operational efficiency and reduce natural gas emissions. In October 2012, USEPA promulgated air quality regulations for completion of hydraulically fractured gas wells (USEPA, 2015b). These rules required air pollution mitigation measures that reduced the emissions of volatile organic compounds during gas well completions. Mitigation included utilizing a process known as a "green" completion in which natural gas brought up during flowback is captured in tanks rather than in open fluid pits. Among other measures to reduce emissions include the USEPA's Natural Gas STAR program.

B. The EA's evaluation of potential risks from induced seismicity resulting from hydraulic fracturing is flawed and requires further analysis.

The Marietta EA adequately addresses potential seismic activity from the proposed oil and gas leasing, and potential development. As to the current state of seismic activity in the geographic region, the Marietta EA states (Page 55):

Ohio ranks 28th amongst the 50 states in seismic activity with 8 earthquakes (3.5 or above) between 1974 and 2003. Geologic mapping and 2-D and 3-D seismic data can locate faults within the area but current science may not be able to differentiate a "natural" earthquake from an earthquake induced by fluid injection.

As to the specific seismic impacts of potential oil and gas development, and specifically hydraulic fracturing, the Marietta EA states (Page 103):

A study conducted by the National Academy of Sciences examined the issue of induced seismic activity from energy development. As a result of the study, they found that: (1) the process of hydraulic fracturing a well as presently implemented for shale gas recovery does not pose a high risk for inducing felt seismic events; and (2) injection for disposal of wastewater derived from energy technologies into the subsurface does pose some risk for

induced seismicity, but very few events have been documented over the past several decades relative to the large number of disposal wells in operation (National Academy of Sciences, 2012). On April 11, 2012, the Deputy Secretary of the United States Department of the Interior, David Hayes, stated that scientists have been investigating the recent increase in the number of earthquakes in the United States to determine whether there is scientific evidence of a link between unconventional oil and gas production and seismic activity. The preliminary findings did not suggest that HF caused the increased rate of earthquakes. Instead, “at some locations the increase in seismicity coincides[d] with the injection of wastewater in deep disposal wells” (Hayes, D. J., 2012).

Also discussed are the measures that the State of Ohio has taken to prevent seismic activity resulting from oil and gas operations. The Marietta EA states (Page 104):

The ODNR now requires operators drilling within three miles of a known fault or area of seismic activity greater than 2.0 to install seismometers. If seismic activity above 1.0 is detected, work must pause while the seismic activity is investigated, and work must stop if the investigation reveals a probable connection to the drilling operation. This regulation would affect drilling primarily in the southern half of the Marietta Unit, since the known and inferred faults and seismic areas are generally in Washington County or near the Washington-Monroe County line (Ohio Department of Natural Resources, 2014).

Therefore, Protesters arguments as to BLM’s failure to address seismic risk is denied.

C. The EA cannot rely on BLM fracking rule, EPA’s methane rule, or BLM’s waste prevention rule to ensure mitigation of any adverse effects from oil and gas operations in the Wayne National Forest.

The EA does not rely on the BLM fracking rule, EPA’s methane rule, or BLM’s waste prevention rule to ensure mitigation of any adverse effects from oil and gas operations in the Wayne NF. Furthermore, no mention of the aforementioned rules is made in the EA. Therefore, Protesters; arguments as to BLM’s reliance on these rules is denied.

DECISION

After a careful review, it has been determined that all of the protested Subject Parcels as described in the March Sale Notice may be offered at the March Lease Sale. The protests to all Lease Sale Parcels are denied for the reasons described above.

You may appeal this decision to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the attached Form 1842-1 (Attachment 2). If you file an appeal, your notice of appeal must be filed in the BLM Eastern States Office, 20 M Street SE, Suite 950 Washington, D.C. 20003, within 30 days from receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR

4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Please contact Elena Fink (Deputy State Director, Natural Resources) at (202) 912-7730 or Nicole Virella (Planning & Environmental Specialist) at (202) 912-7739 with any further questions or concerns.



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